

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-1194

B
PAS

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 75-1194

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

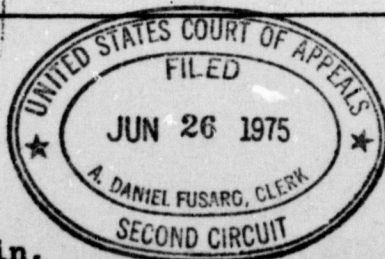
v.

ARNOLD PERER,

Defendant-Appellant.

On Appeal from the United States District Court for the Southern
District of New York

APPENDIX FOR DEFENDANT-APPELLANT ARNOLD PERER



Joan Ross Sorkin,
Of Counsel

HAROLD BAER, JR.
Attorney for Defendant-
Appellant Arnold Perer
80 Pine Street
New York, New York 10005

PAGINATION AS IN ORIGINAL COPY

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D. C. Form No. 100
CRIMINAL DOCKET

JUDGE BRIEANT

74 CRIM. 529

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Richard Wile, AUSA
~ ARNOLD PERER	264-6432
	For Defendant: **
	Murray Richman, Esq.
	1930 Grand Councours
	Bronx, N.Y. 10457
	Harold Baer, Jr.
	% Guggenheimer & Utemyer
	80 Pine Street, NYC 10005

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DIS
(12)					
Fine,		1/24/74	Richard Wile	5	
Clerk,			Meas		
Marshal,					
Attorney,					
XXXXXXXXXX 18					
XXXXXXXXXX 922(a)(1), 924(a)(2)					
922(a)(3),					
Unlicensed dealing in firearms.(Ct.1)					
Unlicensed transportation of firearms.(Ct.2)					
(Two Counts)					

DATE	PROCEEDINGS
5-21-74	Filed indictment.
5-28-74	Deft.(atty. present) Pleads not guilty. Bail fixed by Mag. continued \$5,000. P.R.B. Motions returnable in 10 days. Case assigned to Judge Brieant for all purposes. Cannella, J.
6-4-74	Filed Gov't's Notice of Readiness for Trial or or after June 4, 1974.
6-25-74	Filed Gov't Affidvt in Response to Deft's Motion for Bill of Particulars.
6-25-74	Filed Deft's Motion for a Bill of Particulars.

(Cont'd on Page #2)

74 CR 529

Page #2

74 CR 529 (CLB)

DATE	PROCEEDINGS	CLERK'S FEES			
		PLAINTIFF		DEFENDANT	
6-25-74	Filed MEMO ENDORSEMENT on Deft's Motion for a Bill of Particulars filed this date. The motion is disposed of in accordance with the directions of the Court made this day. See transcript. SO ORDERED --BRIEANT, J. (Mailed notice)				
7-8-74	Filed Notice of Appearance of Atty Murray Richman, 1930 Grand Concourse, Bronx, NY Tel# 878-1360.				
7-12-74	Filed Pltff's /and for deft's motion for a Bill of Particulars.				
10-11-74	Filed Pltff's Affidvt for Writ of Habeas Corpus AD Testificandum by RICHARD WILE, A.U.S.A. Writ issued - Ret. 10-29-74. for one Alexander Rojas.				
10-11-74	Filed affdvt of Richard Wile, A.U.S.A. in support of a Writ for one Kenneth Hochman - Writ issued - Ret. 10-29-74				
10-21-74	Filed Deft's Motion to Suppress Evidence.				
10-29-74	Filed MEMO ENDORSEMENT on Defts motion to Suppress filed 10-21-74. Motion withdrawn, See trial transcript this date. SO ORDERED --BRIEANT, J. (n/m)				
10-29-74	Deft. (Atty Murray Richman present). Jury Trial begun.				
10-30-74	Trial Cont'd.				
10-31-74	Trial cont'd & concluded. Jury verdict - GUILTY on Counts 1 & 2. P.S.I. Ordered. Sentence adj'd to 12-17-74. Bail fixed at \$5,000. Cash or surety. Deft has 24 hrs. to post new bail --BRIEANT, J.				
11-1-74	Filed transcript of record of proceedings, dated 7/23/74 & 9/19/74.				
11-4-74	Filed Appearance Bond in the amount of \$5,000. cash dated 11-4-74. Receipt # 42393 - Name of Surety, Minerva Perer.				
10-15-74	Filed W/H/C Ad Test - Writ satisfied 10-30-74 - WEINFELD, J.				
11-13-74	Filed Defts Notice of Motion for A New Trial.				

(Cont'd on Page #3)

74 CR 529

Page #3

74 CR 529

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS
11-14-74	Filed MEMO ENDORSEMENT on Deft's notice of Motion for a New Trial filed 11-13-74. Motion DENIED. See Transcript of hearing held 11-12-74 -SO ORDERED--BRIEANT, J. (n/m)
11-18-74	Filed transcript of record of proceedings, dated <i>JUL 23 + 5877 19-1974</i>
12-23-74	Filed Deft.'s CJA-23, Financial Affdvt.
12-17-74	Filed Judgment/Commitment Order - The Deft. is hereby committed to the custody of the Atty. General for a period of FIVE (5) YEARS on each of COUNTS 1 and 2, to run concurrently with each other. Pursuant to Title 18, U.S. Code, Section 4208(a)(1), the Deft. shall become eligible for parole after serving ONE (1) YEAR of his sentence. Deft. is continued on his present Bail until he posts Bail pending appeal fixed in the amount of \$5,000.00 cash or surety. ---BRIEANT, J.
12-24-74	Filed Defts Notice of Appeal to the U.S.C.A., 2nd Circuit, from the Judgment and Commitment dtd 12-17-74. (m/n to Atty Pltff & Dwft. 12-27-74.)
1-9-75	Filed transcript of record of proceedings dtd: Oct. 29-31-74.
1-9-75	Filed notice that the record on appeal has been certified and transmitted to the U.S.C.A. for the 2nd Circuit.
1-6-75	Filed transcript of record of proceedings, dated <i>Nov. 12, 1974</i>
3-10-75	Filed true copy of U.S.C.A. Mandate - Ordered that the appeal of Deft. from the judgment of the U.S. Dist. Court for the So. Dist. of NY be and it hereby is DISMISSED. (m/n card #122-3-11-75)
3-31-75	Filed Deft's Motion for Reduction of Sentence under Rule 35 of the F.R.C.P. (To the
4-3-75	Filed MEMO ENDORSEMENT on deft's motion for Reduction of Sentence dated 3-31-75. MOTION DENIED. The court has reviewed the sentence and believe it is appropriate in view of the seriousness of the crime - SO ORDERED--BRIEANT, J. (n/n 4-7-75)
3-31-75	Deft. Perer (atty. M. Richman) present. 2PM Surrender date adjourned until April 21, 1975. Briant, J.
4-14-75	Filed the following papers rec'd from Magistrate Baby (Mag 75-497): Docket Entry Sheet - CJA-23 Financial Affdvt - CJA-20 Appointment of Counsel, Harold Baer, 80 Pine Street, N.Y.C. 10005.
4-29-75	Filed Notice of Appearance of Counsel for Deft pursuant to his appointment as Counsel by U.S. Magistrate Harold J. Baby on 3-31-75. Harold Baer, Jr., c/o Guggenheimer & Utermeyer, 80 Pine Street, N.Y.C. 10005 Tel: (212) 344-2040.
5-5-75	Filed ORDER - IT IS HEREBY ORDERED that Harold Baer, Jr. be appointed counsel to Deft. ARNOLD PERER in the above captioned case pursuant to the Criminal Justice Act, 18 U.S.C., Sec. 3006A, for the purpose of his appeal from his conviction entered by this Court and for all other proceedings in connection thereto. ---BRIEANT, J.
5-5-75	Filed MEMO ENDORSEMENT on the above ORDER filed this same date. --- The Court has been advised that H. ELLIOT WALES, ESQ., has never actually appeared for this Deft. and appropriately declines for that reason to sign the within Consent--BRIEANT, J.
5-8-75	Filed notice that the record on appeal has been Certified and transmitted to the U.S.C.A., for the 2nd Circuit on 5-8-75.
5-29-75	Filed transcript of record of proceedings, dated <i>March 31, 1975</i>

(Cont'd on Page #4)

[No page #4.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 CRIM. 5291

UNITED STATES OF AMERICA

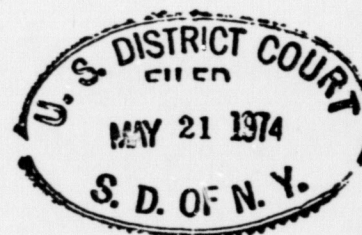
-v-

ARNOLD PERER,

Defendant.

INDICTMENT

74 Cr.



COUNT ONE

The Grand Jury charges:

From on or about the 23rd day of November, 1973
to on or about the 9th day of December, 1973, in the
Southern District of New York, ARNOLD PERER, the defendant,
who was not then a licensed importer, licensed manufacturer
or licensed dealer, unlawfully, wilfully and knowingly did
engage in the business of dealing in firearms.

(Title 18, United States Code, Sections 922(a)(1),
924(a) and Section 2.)

COUNT TWO

The Grand Jury further charges:

On or about the 9th day of December, 1973, in the
Southern District of New York, ARNOLD PERER, the defendant,
who was not then a licensed importer, licensed manufacturer,
licensed dealer or licensed collector, unlawfully, wilfully
and knowingly did transport into and receive in the State

MAY 22 1974

where he resided, to wit, New York, twenty-eight firearms, namely, one .38 caliber Colt Cobra revolver, two Titan .32 caliber revolvers, twelve Titan .25 caliber revolvers, six Galesi .25 caliber automatic pistols, one Phoenix .25 caliber automatic pistol, two RG .38 caliber revolvers, two Charter Arms revolvers, one H & R .38 caliber revolver and one FIE .38 caliber Derringer, which firearms were purchased and otherwise obtained by him outside said State.

(Title 18, United States Code, Sections
922(a)(3), 924(a) and Section 2.)

Robert J. Hudson
FOREMAN

Paul J. Curran
PAUL J. CURRAN
United States Attorney

74001-29

United States District Court
SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.

ARNOLD PERER,

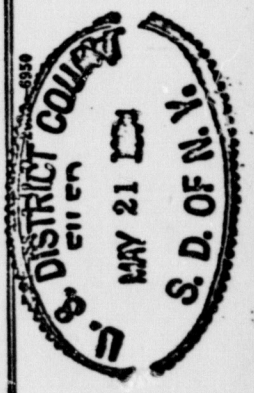
Defendant.

INDICTMENT
74 Cr.

(18, U.S.C. §§922(a)(1),
922(a)(3), 924(a) and 2.)

PAUL J. CURRAN
United States Attorney.
A TRUE BILL

Robert J. Anderson
Foreman.



JUDGE BRIANT

MAY 28 1974

Def't Present (Atty H. Richman)
Def't pleads N.Y. 10 days for
notions. Case assigned to
Briant J. Bail can't as primary
fixed by the magistrate at
\$5,000 P.B. 20

Cancelled

J. Cummings
Reported

OCT 29 1974 N.Y. (Atty. Murray Richman) present.
Jury trial begun.

Oct. 30, 1974 Trial cont'd.
Oct. 31, 1974 Trial cont'd. & concluded.
Jury verdict. Guilty on cts 1 & 2
P.S.I. A Sentence adj'd. to 12/17/74

Bail fixed at \$5,000 Cash or security
as ~~fixed~~ book just up as collateral.
N.Y. has 24 hrs to post new
bail.
Briant J.

1.3

12/17/74 Left Perer (Atty present)

Sent. to 5 yrs. la. if counts 1 & 2,
 run concurrently. Pursuant to T. 18, USC
 Sect. 4308 (a)(1) deft to become eligible
 for parole after serving 1 yr.
 Bail cont'd until deft posts bail pending
 appeal fixed at \$5,000 cash or surety.

Bresant, J.

2/31/75 Left Perer (Atty Murray Richmond Richman)
 present. Surrender adj'd. to April 21/
 Bail cont'd.

Bresant, J.

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MR. RICHMAN: The defendant calls Arnold

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Perer.

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ARNOLD PERER, the defendant herein,

17

called as a witness in his own behalf, being first

18

duly sworn, testified as follows:

19

DIRECT EXAMINATION

20

BY MR. RICHMAN:

21

Q Mr. Perer, how old are you?

22

A Thirty-two years old.

23

Q As I indicated to the other witnesses, could you

24

please speak up. I have problems.

25

A Thirty-two years old.

2 Q Are you married?

3 A Yes, I am.

4 Q Is Ramona Perer your wife?

5 A Yes.

6 Q That was the woman who testified earlier this
7 afternoon?

8 A Yes.

9 Q Where do you live?

10 A I live at 303 Adco Avenue.

11 Q Is that in the County of the Bronx?

12 A Yes.

13 Q Where do you work?

14 A I work for I. J. Peyser & Sons, floor con-
15 tractors.

16 Q How long have you been working there?

17 A I worked for them while I was using narcotics --

18 THE COURT: No. How long?

19 THE WITNESS: Well, for the last four years.

20 Q Do you also have a side business of your
21 own?

22 A Yes.

23 Q Is that floor scraping and polishing?

24 A Yes.

25 Q Do you go to school?

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coa

A. Perer-direct

Tr. 237

A I was going to Bronx Community College.

Q When did you stop going to Bronx Community?

A When I was arrested. I took a leave of absence

Q What were you majoring in?

A I was taking a general course. I wasn't specializing in anything at that time.

Q Mr. Perer, it has been talked about --

THE COURT: No introductory statements like that. Frame a question.

Q Were you a drug addict at one time?

A Yes.

Q How long did you use narcotics?

A A period of a little over 13 years.

Q When did you start using narcotics, at what age?

A About 15 years old.

Q Were you addicted to narcotics continuously and regularly until your 23th birthday or thereabouts?

A Yes.

Q Will you tell us how you supported your habit during those 13 years?

A By shoplifting, mostly, and petty thefts and anywhere I could get the money to get a fix.

Q Did you on occasion sell pills?

A Yes.

1

coa

A. Perer-direct

Tr. 238

2

Q

Is that the narcotics you alleged to have

3

sold?

4

A

Yes.

5

Q

Barbiturates?

6

A

Yes.

7

Q

Were you ever arrested for a crime of vio-

8

lence?

9

A

No.

10

Q

There has been mention that you had a gun --

11

at one time you were arrested for the possession of a gun,

12

is that correct?

13

A

Yes.

14

Q

How old were you then?

15

A

19 years old.

16

Q

Since your 28th birthday have you used nar-

17

cotics?

18

A

No, only the methadone, prescribed by the

19

methadone clinic.

20

Q

Is that the methadone treatment program?

21

A

Yes.

22

Q

Before that, until your 28th birthday or there-

23

abouts, early 20's, where did you live?

24

A

Rooftops, basements, abandoned cars.

25

Q

When you went on the methadone treatment program

1
2 what did you do?

3 A What did I do? I started living.

4 Q Did you get a job?

5 A Right, I got a job.

6 Q The same job we are talking about now?

7 A Yes.

8 Q You held the job for four years?

9 A Yes.

10 Q What else?

11 A I enrolled in school; I got my apartment. I
12 never had an apartment before in my life. I was depend-
13 ent on someone else. I got married and in general,
14 you know, after 28 years I just came to life, I started
15 living.

16 Q Did you prior to October or November of 1973
17 ever sell anyone, Mr. Rojas or anybody in this world,
18 guns?

19 A Never.

20 Q I direct your attention to July of 1973. Do
21 you recall Mr. Rojas coming to you with a view towards sell-
22 ing you some guns or buying some guns from you?

23 A Yes.

24 Q Will you tell us the circumstances under
25 which he first came to you concerning guns?

2 A He came to me and he asked me, he says --
3 first he asked me if I could get any guns. I told
4 him no. He knew I had owned two guns and he had
5 been trying to buy those two guns from me for the longest
6 time and I just would not sell them to him because they
7 were for my own personal use in the home. I told him I
8 would not sell them.

9 He kept coming back and kept coming back, and
10 then finally one day he came in and he asked me, "Arnie,"
11 he says, "listen, do me a favor. These guys are on
12 my back. Would you come outside and tell them that
13 you can get guns just so that they will get off my back?"

14 And so I says, "Okay, I will come out."

15 I went outside and I told the guy sitting in
16 the car, which I learned now is an agent, that, "Yes, I
17 could get you guns."

18 Q Will you tell us when that was in point of time?
19 time?

20 A Excuse me.

21 Q Will you tell us approximately when that was?

22 A This was in July some time.

23 Q Go right ahead, please.

24 A From that point on he came with regularity
25 wanting to buy guns. "Can I get guns?"

1 coa

A. Perer-direct

Tr. 241

2 I kept telling him, "No. I have these, they are mine.
3 The rifles are for display, I will not sell them, you
4 know. I have no means of buying guns."

5 Q What did he tell you then?

6 A He kept telling me that I could name my own
7 price, that they wanted to offer me a hundred dollars,
8 and the next time he come it was \$150, and then it was
9 \$200. You know, each time he came he kept telling
10 me that they would give me more and more money if I
11 would do this for them.

12 Q Did there come a time on or about the
13 third week of November when you had a conversation with Mr.
14 Rojas concerning where to purchase guns?

15 A Yes, yes.

16 Q Will you tell us the circumstances under which
17 you had this conversation?

18 A Kenny was down South and he had called me on the
19 phone.

20 Q You are referring to Kenny Hochran?

21 A Yes.

22 Q Is that the person who testified earlier today?

23 A Right.

24 Q He is a cousin of yours by marriage, is he
25 not?

1
2 A True.

3 Q Kenny had called me from down South and he
4 asked me did I know where that he could buy guns because
5 he doesn't know where to buy guns and I said no. Alex
6 happened to be there at the time and Alex showed me a bus
7 ticket and it said that he had gone to Florida to buy guns
8 and that he knew the place, and I had given him the
9 phone and he spoke to Kenny and he was the one who told
10 Kenny where actually to buy these guns.

11 Q That was when?

12 A This was in November, the first time that Kenny
13 Hochman had gone down for the guns.

14 Q Does that correspond with the testimony that you
15 heard in court concerning November 23rd and November 26th
16 guns?

17 A No, it doesn't jive.

18 Q Is that where Mr. Hochman got the guns, if
19 you know?

20 A No, Alex told him that he was in the wrong
21 state, that he would have to go to Virginia, you know,
22 that it was easier to buy guns in Virginia.

23 Q And then he came back and he came back with
24 guns?

25 A Yes.

1 coa

A. Perer-direct

Tr.243

2 Q Were those the guns we were speaking of November
3 23rd and November 26th?

4 A Yes.

5 Q So it is your testimony that you had no part
6 in that transaction?

7 A None at all.

8 Q I direct your attention to the transaction that
9 occurred or the purchase of guns in the South on December
10 7th and 8th. Did you go with Kenny Hochman down South
11 to purchase guns?

12 A Yes, I did.

13 Q Was that only after you were prevailed upon?

14 MR. LOWE: Objection.

15 THE COURT: Sustained.

16 Q Was that only after some period of time of
17 conversation?

18 THE COURT: No, you can't frame a question
19 like that. It is argumentative.

20 Q So the first time you went down to purchase
21 guns was December 7th and 8th?

22 A Yes.

23 Q Is it not a fact that you --

24 MR. GARNETT: Objection.

25 THE COURT: You have to let him finish the

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A. Perer-direct

Tr. 244

question.

MR. LOWE: Your Honor, the form is clearly leading.

THE COURT: He can finish the question, and I ask the witness to wait until I make a ruling.

Q Is it not a fact that you obtained a false registration or a false identification for the purpose of purchasing guns?

THE COURT: There is no objection to that question. You can answer it yes or no.

A Yes.

Q On this identification I show you Government's Exhibit 6 in evidence and ask is it a photocopy or a reasonable facsimile of that identification?

A Yes.

Q Could you indicate to the jury, just by telling them, what is false about the information on that card?

A Just my place of residence.

Q Just your place of residence?

A Yes.

Q You have your name on the card?

A My name, Social Security number, my birth date, my height, weight, everything is my true --

Q And you did go to various places and make certain

1 eoa

A. Perer-direct

Tr. 245

2 purchases of guns, did you not?

3 A I went to one place, yes, and bought guns.

4 Q This place you bought guns you gave your true
5 name?

6 A Yes.

7 Q Did you see these documents prepared in front
8 of you and did you sign your signature referring to
9 Government's Exhibit 9 in evidence? Is that your sig-
10 nature?

11 A Yes.

12 Q Did you eventually come back to New York on or
13 about the morning of December 9, 1973?

14 A Yes, we did.

15 Q Were you apprehended?

16 A Yes.

17 Q Who apprehended you? Was that Mr. Mazzilli?

18 A Yes.

19 Q And D'Atri?

20 A Mr. Mazzilli and Agent Varcos, I believe his name
21 is.

22 Q Do you remember having a conversation or having
23 a statement made in your presence by Mr. Mazzilli to
24 Mr. Hochman concerning you?

25 A Yes.

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Q Will you tell us what Mr. Mazzilli said to Mr. Hochman?

A Mr. Mazzilli opened the door and --

THE COURT: What did he say?

THE WITNESS: He said to Mr. Hochman, he say "You see what you did, you idiot? You see how you got your cousin involved?"

THE COURT: He said that to Mr. Hochman?

THE WITNESS: Yes, sir.

Q Did he repeat that statement in Magistrate's Court downstairs in this building at the time of your arraignment?

A Yes, he did.

Q Mr. Perer, aside from the transaction which you just stated that you purchased the guns on December 7th and 8th, did you ever purchase guns with the intent to sell them?

A Never.

Q Did you ever sell guns to anyone or participate in the sale of the guns?

A Never.

MR. RICHMAN: No further questions.

1 coa.

A. Perer-cross

Tr. 247

2 CROSS EXAMINATION

3 BY MR. GARNETT:

4 Q Mr. Perer, you testified on your direct examina-
5 tion that you had never been arrested for a crime of
6 violence, is that right?

7 A That is right.

8 Q Isn't it a fact that you were arrested in
9 Paterson, New Jersey for attempted use of a deadly
10 weapon in 1969?

11 A No, sir.

12 Q Isn't it a fact that you were arrested in Wayne,
13 New Jersey in 1969 for offensive use of a weapon?

14 A No, sir.

15 Q Isn't it a fact that you were also arrested in
16 Paterson, New Jersey for the unlawful use of heroin?

17 A That is true.

18 THE COURT: Was there a conviction with
19 respect to that, Mr. Garnett?

20 MR. GARNETT: Which charge, Your Honor?

21 THE COURT: The heroin.

22 MR. RICHMAN: I would object, Your Honor.

23 THE COURT: You should object. If there is
24 no conviction on the heroin I will instruct the jury to
25 disregard it.

1 Q Mr. Rojas came to your house in July of '73.
2
3 Is that the first time you had met him?

4 A No, I had known him prior.

5 Q When?

6 A I guess I had known him when I first moved to
7 Adco Avenue about three or four years.

8 Q Did you meet him in a park on various occasions?

9 A Yes.

10 Q Did you meet him to sell drugs and buy drugs?

11 A No.

12 Q Sell guns?

13 A No.

14 Q Isn't it a fact that you and Kenneth Hochman
15 drove to the park on one day in a green automobile for the
16 purpose of discussing guns with him?

17 A Yes.

18 Q When was that? Wasn't that before you met Agent
19 Mazzilli?

20 A No, I believe it was after I met Agent Mazzilli.

21 Q Isn't it a fact that you sold guns to Mr. Rojas
22 before you even met Agent Mazzilli?

23 A No, I never sold no guns to Alex.

24 Q Did you discuss guns with him?

25 A Excuse me?

1 Q Did you discuss guns with him?

2 A Yes, he wanted to buy the two that I had for
3 the longest time.

4 Q Isn't it a fact that you sold him a .32 caliber
5 pistol?

6 A No, it is not a fact.

7 Q Even after you met Agent Mazzilli did you
8 sell any weapons to Alex Rojas?

9 A No.

10 Q Did you sell any .25 caliber ammunition?

11 A No.

12 Q Isn't it a fact that you discussed -- at the
13 time you purchased .25 caliber ammunition, that you
14 discussed the purchase of 9 mm. shells for a machine
15 gun?

16 A Of course not, no.

17 THE COURT: Discussed with whom, Mr. Gar-
18 nett?

19 MR. GARNETT: Mr. Rojas.

20 THE COURT: Do you understand the ques-
21 tion?

22 THE WITNESS: I believe so. He asked me
23 if I had sold him machine gun bullets.

24 THE COURT: Did you discuss the sale?

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coa

A. Perer-cross

Tr. 250

2

Q Did you discuss the purchase of 9 mm. machine

3

gun shells?

4

A No.

5

Q Are you familiar with Owenville Arms on

6

Riklings Road?

7

A Yes.

8

Q Have you made any purchases from that store?

9

A No. You never bought a holster from that

10

store?

11

A A holster, yes.

12

Q When did Agent Mazzilli meet Kenneth Hochman,

13

to your knowledge?

14

A I imagine it was July. I suppose July of

15

'73.

16

Q You imagine?

17

A Well, I don't know the exact date as well as the

18

agents do.

19

Q What is your knowledge of the occasion when

20

Kenneth Hochman met Agent Mazzilli?

21

A I was talking to the agents in the hall-

22

way.

23

Q This was in July of '73?

24

A Yes.

25

Q Isn't it a fact it was November 23rd?

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A. Perer-cross

Tr. 251

MR. RICHMAN: Objection. Argumentative.

THE COURT: Overruled.

A No, it wasn't.

Q Is that your testimony, that Kenneth Hochman met in your presence Agent Mazzilli prior to November 23, 1973?

A Yes.

Q What were the circumstances of that meeting?

A I was talking to the agents and Kenny came along and he heard me say that, no, I couldn't get no guns and that, you know, I had no information as towards guns, and Kenny right away said, "What you're want? I will get you all the guns you want."

And I told the agents on the following occasion, I says, "Listen, if anything goes on between you and Kenny, I've got nothing to do with it. It's you and Kenny," and I bowed out.

Q Isn't it a fact that you met Agent Mazzilli for the first time face to face in discussion on October 14, 1973?

A No, sir, I met Agent Mazzilli three or four months prior to that date.

Q Isn't it a fact that the very next day --

1 coa

A. Perez-cross

Tr. 252

2 strike that.

3 Isn't it a fact that two days later, October
4 16th, you arranged to meet with Agent Mazzilli at the
5 Julius Rivera Insurance Company on Tremont Avenue?

6 A Yes.

7 Q Why were you there?

8 A Henry had asked me to show them where his
9 office was?

10 A Did anyone force you to discuss guns with Agent
11 Mazzilli?

12 A No.

13 Q Did anyone force you to have a meeting in your
14 office on November 26th and sell guns?

15 A I didn't sell guns.

16 Q Did Rojas put any pressure on you to sell guns
17 to these people?

18 A What do you mean by pressure? If you mean
19 antagonist --

20 THE COURT: The reporter cannot take three
21 voices at once.

22 A Yes, he did antagonize me.

23 THE COURT: Who antagonized you?

24 Q Alexas Rojas antagonized you to meet with
25 Mazzilli to make arrangements to sell guns?

1 eoa

A. Perer-cross

Tr. 253

2 A He came to me on so many occasions that I
3 used --

4 Q Will you answer my question?

5 THE COURT: You see, you have got to go a
6 little slower here. Please answer the question.
7 Don't make a speech. Listen to the question care-
8 fully. Take your time and answer it.

9 Q What pressure was placed on you to deal with
10 the agents?

11 A The fact that they came to my house every day
12 two or three times a day.

13 Q The agents you are referring to?

14 A Agents and Alex, both of them.

15 Q I want you to specify. Who came to your house
16 how many times?

17 MR. RICH: Objection. If he can, your
18 Honor.

19 THE COURT: Overruled.
20 Who came to your house, how many times starting
21 July?

22 THE WITNESS: Alex came to my house so many
23 times it is really unbelievable how much times he
24 approached me and called me and came to the house. I
25 couldn't tell you exactly how many times, but it was him.

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A. Perer-cross

Tr. 254

2

Q That was pressure?

3

A Not pressure.

4

Q Is that your opinion that it was pressure?

5

A In so far that he was holding a gun to my head or anything like that, but as a friend, you know, he kept coming to me and asking me to do this.

8

Q Isn't it a fact that on November 7th you had a meeting in your hallway with Agents Mazzilli and D'Atri at which time you expressed your concern that there were undercover agents around?

9

10

11

12

A Yes, I told them that they were undercover agents and I didn't care.

13

14

Q You told them you had to be careful?

15

A No, I told them I suspected them to be agents but I didn't care because I had nothing to do with these dealings.

17

18

Q Isn't it a fact that in your presence on November 7th Agent Mazzilli slapped Agent D'Atri?

19

20

A No.

21

THE COURT: He what?

22

MR. GARNETT: Slapped.

23

THE COURT: Hit him? He hit him, you

24

mean?

25

MR. GARNETT: Yes, your Honor.

2 A It was the other way around.

3 Q Why did he smack him? Do you recall why?

4 A Yes. I had said -- no, the agent had said,
5 one agent came in and says, "What are you doing?"

6 So Mazzilli says, "I'm trying to buy guns,"
7 and the other agent hit him and said, "What are you,
8 crazy?"

9 That was the whole content of that.

10 THE COURT: You told these two people you
11 thought they were agents?

12 THE WITNESS: Yes, your Honor. I told
13 them, "I've got a feeling you guys are agents, but I don't
14 care because I'm not involved in this." I said, "You
15 carry on. If you want to do business with Kenny, fine."

16 THE COURT: This was before you went to
17 Virginia that you told these people that?

18 THE WITNESS: Yes, your Honor.

19 Q Isn't it a fact that when you were meeting with
20 the agents you also discussed money?

21 A I never discussed money with them. Kenny
22 wouldn't let me.

23 Q You never discussed with them that you received
24 a few bucks and a pistol out of one of their deals?

25 A No, sir. I did receive a pistol out of the

1 eoa

A. Perer-cross

Tr. 256

2 deal. Kenny Hochman had given it to me, yes.

3 Q Isn't it a fact that when you were arrested
4 you spoke to an assistant U. S. attorney and told him
5 that you did not need the money but that you did it?

6 A I did it because I was pressured.

7 THE COURT: What did you tell the assist-
8 ant U. S. attorney? Would it help to give the man
9 a name?

10 A THE WITNESS: I don't remember the man's
11 name.

12 Q Do you recall when you were arrested you
13 spoke with an assistant U. S. attorney named Thomas Engel?

14 A I don't remember his name, but it's probably
15 the man.

16 Q Do you recall that you were interviewed
17 prior to your being arraigned?

18 A Yes.

19 Q Do you recall at that time you discussed with
20 him your involvement with Kenny Hochman and this
21 arrest?

22 A Yes.

23 Q Did you make a statement to him that you were
24 doing this for the money but you didn't need it?

25 A No.

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A. Perer-cross

Tr.257

A No.

Q You didn't tell him that your parents could help you?

A Excuse me. I did tell him that they had offered me so much money that I almost couldn't refuse it.

Q They offered you so much money you couldn't refuse it?

A Yes, the agents kept offering me more and more money if I would go down and buy the guns for them.

THE COURT: How much money did they offer?

THE WITNESS: They started out with \$75, your Honor, and the last price was \$250.

THE COURT: For each gun?

THE WITNESS: For each gun, yes. They offered to pay -- they knew they knew that my wife and I were going to take a late honeymoon and we had saved five or six hundred dollars and they kept telling me, "If you made this trip you would have a thousand plus what you have got and you can have a long and beautiful vacation down there."

Q Mr. Perer, you heard testimony about your fixing up your house?

A Yes.

Q Where did you get the money for this?

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A. Perer-cross

Tr. 258

A Working for it.

Q Isn't it a fact that you also have a miniature gun shop in your house?

A I don't understand what you mean.

Q Some kind of functional structure that you use in firing weapons in your house.

A No, sir.

Q Isn't it a fact that you fire weapons in your basement?

A Yes, sir.

Q You heard Agent Mazzilli testify in this court, did you not?

A Yes.

Q You also heard the stipulation that if Agent D'Atri testified he would testify as to the same occurrences as Agent Mazzilli?

A Yes.

Q Is it your position that they were lying?

A Yes, they were.

MR. RICHMAN: Objection, your Honor.

THE COURT: Sustained.

Q Is it your position --

THE COURT: Objection is sustained to that line of inquiry, Mr. Garnett. Strike out the answer, and

1 coa.

A. Perer-cross

Tr. 259

2 the jury will disregard it. It is not proper cross
3 examination to ask a witness if another witness is lying.

4 Q Mr. Perer, isn't it a fact that you were around
5 during these negotiations for weapons with Agents
6 Mazzilli and D'Atri, you were present at those negotia-
7 tions, or some of them?

8 A I was present at some of them, yes.

9 Q Isn't it a fact that you went down to Virginia
10 and bought 15 guns in your own name, using the false
11 identification showing you to be a resident of Virginia?

12 A I believe it was 12 guns, yes.

13 THE COURT: He bought 12, all right.

14 A I believe it was 12 pistols in one store I
15 bought.

16 Q Government's Exhibit 9 will show that your sig-
17 nature appears on --

18 MR. RICHMAN: Objection.

19 THE COURT: He can be shown Exhibit No. 9.
20 Show him the exhibit and ask him if the exhibit refreshes
21 his recollection as to how many there were.

22 Frame a question and ask him to look at Exhibit
23 No. 9 and tell us whether that refreshes his recollection
24 as to how many guns there were.

25 Q You are now looking at Exhibit 9. Does

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A. Perer-cross

Tr. 260

that refresh your recollection as to the number of guns you purchased?

A You are right, it was 15.

THE COURT: Fifteen?

THE WITNESS: Yes, they were all bought in one store, though. I didn't go from store to store.

Q Isn't it a fact you were to get some money out of this deal?

A Yes, on this one I was.

Q Isn't it a fact that the only reason why you are testifying as you are is that you know that you are in a very serious problem with the law?

MR. RICHMAN: Objection, your Honor.

THE COURT: Yes, sustained.

Q You have admitted all your participation in the events leading to your arrest?

MR. RICHMAN: Objection, your Honor.

THE COURT: Sustained.

Q You met with the agents, you went to Virginia, you hoped to make some money --

MR. RICHMAN: Objection, your Honor.

This is summation.

Q Did you sit in on the negotiations?

THE COURT: One thing at a time.

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Q Were you present at the negotiations?

A Which negotiations?

Q With the agents and with Mr. Hochman.

A No. Mr. Hochman made all the arrangements.

He set the prices and everything.

THE COURT: He is just asking you if you were there when the conversations were taking place.

A On some of them, yes, but not all of them.

Q Isn't it a fact that you went to Virginia?

A Yes.

Q You know that it was illegal to bring those guns to New York, didn't you?

MR. RICHMAN: Objection.

THE COURT: Overruled.

MR. RICHMAN: I withdraw that objection, your Honor.

A Would you please repeat it.

Q You knew it was illegal to bring those guns to New York?

A Yes, I did.

MR. GARNETT: No further questions, your Honor.

THE COURT: Any redirect examination?

MR. RICHMAN: Briefly, your Honor.

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A. Perer-redirect

Tr. 262

2 REDIRECT EXAMINATION

3 BY MR. RICHMAN:

4 Q Between July, 1973 and December of 1973,
5 some five months, did you sell, give, purchase for sale
6 any guns to anyone, at any time, at any place?

7 A Never, no.

8 Q Mr. Perer, I neglected to ask you on direct:
9 were you a member of the armed forces?

10 A Yes, I was.

11 Q Did you receive an honorable discharge?

12 A Yes.

13 Q I show you Defendant's Exhibit --

14 (Defendant's Exhibit D was marked for iden-
15 tification.)

xx 16 Q Is this your honorable discharge from the
17 Army of the United States?

18 A Yes, it is.

19 Q Does that indicate January of 1967?

20 A Yes.

21 MR. RICHMAN: I at this time, your Honor,
22 offer it as Defendant's Exhibit D in evidence.

23 MR. GARNETT: No objection, your Honor.

24 THE COURT: Received in evidence.

25 MR. RICHMAN: I have no further questions.

1 THE COURT: All right, the defendant may
2 step down.
3

4 (Witness excused.)

5 MR. RICHMAN: If the Court pleases, the
6 defendant rests at this time.

7 THE COURT: All right. We will take a
8 short recess, members of the jury. You may withdraw to
9 the jury room. Don't discuss the case.

10 (The jury left the courtroom.)

11 MR. RICHMAN: If the court pleases, at this
12 time the defendant respectfully moves for a directed
13 verdict based on the facts as illustrated.

14 THE COURT: The motion is denied. The
15 court believes it is a question for the jury.

16 MR. RICHMAN: I realize that. I wanted
17 to make certain points if I might. This is not the
18 ordinary case of the government asking with respect to the
19 defendant to sell or to commit a crime that he was
20 already engaged in. In this case, your Honor, the
21 government obtained a special employee, one Alex Rojas, to
22 act as their agent and so acting as their agent, knowing
23 that the defendant needed money, had peculiar circum-
24 stances, inveigled him and spent so much time in working
25 on him, caused him to go along.

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THE COURT: It is a jury question.

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MR. RICHMAN: Very well, your Honor. Thank

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you, sir.

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THE COURT: All right, I said I would

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charge it. It is up to them to make the finding of
fact.

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Will the government have any rebuttal testi-

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mony?

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MR. GARNETT: No, your Honor.

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CHARGE OF THE COURT

(Brieant, J.)

THE COURT: Mr. Karp and members of the jury:

We are now at that stage in the trial where you will very soon undertake your final function as jurors and here you perform one of the most sacred obligations of citizenship and that is acting as ministers of justice.

You are to discharge this final duty in an attitude of complete fairness and impartiality as was emphasized by me when you were first selected, without bias or prejudice for or against the government or the defendant as parties to this controversy.

Let me state the fact that the government as a party entitles it to no greater consideration than that accorded to any other party to litigation.

By the same token, it is entitled to no less consideration. All parties, individuals and government

1 eobr 3

2 alike, stand as equals before the bar of justice in this
3 court.

4 Specifically, I would like to say to you in
5 view of one or two of the comments that Mr. Garnett did
6 make in his closing argument that the credibility or the
7 standing or the integrity of the government is not at
8 stake in this prosecution. You are not required to make
9 any determination in that area. You are to determine the
10 facts in this case and decide the issue tendered by this
11 accusation or these accusations that have been made in this
12 indictment. You are to determine whether the government
13 proved in this case beyond a reasonable doubt all of the
14 elements of the two counts charged in the indictment and
15 that is all that is before you.

16 It is not a situation in which you are
17 deciding whether or not the government administers its
18 affairs properly or whether or not the government is honest
19 in its presentations or anything of that sort. It is a
20 dispassionate determination of factual issues in this case.
21 It is to be done as judges of the fact, free from any
22 outrage, free from any bias or prejudice of any kind for
23 or against anybody and you, members of the jury, your final
24 role here is to decide and pass upon the fact issues
25 in the case and you are the sole and exclusive judges

1 eobr 4

2 of the fact.

3 You determine the weight of the evidence. You
4 appraise the credibility or truthfulness of the witnesses
5 in the case and you draw the reasonable inferences from the
6 evidence and you resolve such conflicts as there may be in
7 the evidence. That is your function.

8 I will later tell you how you go about determin-
9 ing the credibility or truthfulness of witnesses.

10 Now, my final function is to instruct you as to
11 law and it is your duty as jurors to accept these in-
12 structions as to law, both as affecting your function as
13 jurors and as affecting the issues in this case, and
14 to apply my instructions to the facts as you may find them.

15 You are to do so, even if you think that perhaps
16 the law should be different or even if you think that
17 perhaps I may not have instructed you correctly as to the
18 law, it is your obligation to follow my instructions as to
19 the law.

20 Now, you are not to consider any one instruction
21 which I give you alone as stating the law, but you must
22 consider all of my instructions taken together as a
23 whole. With respect to any fact matter, it is your
24 recollection and yours alone that governs. Anything the
25 lawyers said, either for the government or the defendant,

1 eobr 5

2 with respect to matters in evidence, whether they said it
3 during the trial, in a question, in their opening or in
4 summations is not to be substituted for your own recol-
5 lection of the evidence.

6 So, too, anything that I might say during the
7 trial or anything that I might refer to during the course
8 of these instructions as to any matter in evidence is
9 not to be taken in lieu of your own recollection.

10 Now, the attorneys not only have the right,
11 but their duty to make objections and to press whatever
12 legal theories they may have. Each of them is simply
13 performing his duty. Any evidence as to which an
14 objection was sustained by the Court and any evidence order-
15 stricken out by the Court must be disregarded in its
16 entirety.

17 Put out of your mind any exchanges which
18 may have occurred during the trial between the lawyers
19 or between any attorney and the Court. It is not my
20 function to favor one side or another or to criticize
21 anybody in any way whatsoever or to indicate to you,
22 the jury, in any way that I have any opinion as to the
23 credibility of any witness or as to the guilt or inno-
24 cence of the defendant. That is your function; yours
25 alone and I leave it entirely with you.

1 eobr 6

2 So, please do not assume that I hold any opinion
3 in any matters concerning this case and please do not reach
4 any conclusion that I may have some attitude or that I may
5 tend to favor one side or the other in the case. I do
6 not.

7 Now, of course, the indictment here itself is no
8 evidence of the crimes charged. Instead, an indictment is
9 merely the method or procedure under the law whereby persons
10 accused of crimes by a grand jury are brought into court to
11 have their guilty or innocence determined by a trial jury
12 such as yourselves.

13 Therefore, the indictment must be given no
14 evidentiary value, but shall be treated by you only as
15 an accusation. It is not evidence or proof of the
16 defendant's guilt and no weight or significance whatsoever
17 is to be given to the fact that an indictment has been
18 returned against the defendant.

19 He has pleaded not guilty and thus the govern-
20 ment has the burden of proving the charges beyond a
21 reasonable doubt.

22 The defendant does not have to prove his inno-
23 cence. On the contrary, he is presumed to be innocent
24 of the accusations contained in the indictment and this
25 presumption of innocence was in his favor at the start of

1 eobr 7

2 the trial, as I believe I told you at that time, it con-
3 tinued in his favor throughout the entire trial and it
4 is in his favor now and remains in his favor during the
5 course of your deliberations in the jury room.

6 The presumption of innocence is removed only
7 if and when you, the jury, are satisfied that the government
8 has sustained its burden of proving the guilt of the
9 defendant beyond a reasonable doubt.

10 Of course, unless you are so convinced, you must
11 find him not guilty.

12 Now, the question naturally comes up, what is a
13 reasonable doubt? Well, members of the jury, those words
14 almost define themselves. That is a doubt founded on
15 reason arising out of the evidence in the case or the lack
16 of evidence. It is a doubt which a reasonable person
17 has after carefully weighing all the evidence. Reasonable
18 doubt is a doubt that appeals to your reason, to your
19 judgment, to your common sense and your experience.

20 It is not caprice or whim or speculation or
21 conjecture or suspicion. It is not an excuse to avoid the
22 performance of an unpleasant duty and it is not sympathy
23 for a defendant.

24 If after a fair and impartial consideration of all
25 the evidence you can candidly and honestly say you are

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2 not satisfied of the guilt of a defendant, that you do not
3 have an abiding conviction of a defendant's guilt of the
4 particular charge you are then considering, in sum, if you
5 have such a doubt as would cause you as prudent persons to
6 hesitate before acting in matters of importance to your-
7 selves, then you have a reasonable doubt and in that circum-
8 stance it is your duty to acquit.

9 On the other hand, if after such an impartial and
10 fair consideration of all the evidence you can candidly
11 and honestly say you have an abiding conviction of the
12 defendant's guilt, such a conviction as you would be will-
13 ing to act upon in important and weighty matters in the
14 personal affairs of your own life, then you have no
15 reasonable doubt and under those circumstances it is your
16 duty to convict.

17 Reasonable doubt does not mean a positive
18 certainty or beyond all possible doubt. If that were
19 the rule, few men, however guilty they might be, would ever
20 be convicted because it is practically impossible for a person
21 to be absolutely and completely convinced of any controverted
22 fact which by its nature is not susceptible to mathematical
23 certainty.

24 For that reason the law in a criminal case is
25 that it is sufficient if the guilt of a defendant is estab-

(Lines 1 and 2 re-typed.)

1 eobr 9

2 lished beyond a reasonable doubt not beyond all possible
3 doubt.

4 Now, the indictment in this case, members of
5 the jury, contains two counts and each count charges a
6 separate crime and they must each be considered separately
7 and you will be asked to give a separate verdict as to each
8 count.

9 In determination of innocence or guilt you must bear
10 in mind that guilt is personal. The guilt or innocence of
11 a defendant on trial before you must be determined with
12 respect to him solely on the evidence presented against
13 him or the lack of evidence. Although in doing so you may
14 have to consider the activities of others such as the person
15 referred to as Kenneth Hochman, but the case of a defendant
16 falls or stands upon the proof or the lack of proof of
17 the charge against him and not against somebody else.

18 Now, in this case you may consider all the
19 believable testimony and evidence which you have re-
20 ceived no matter which side of the case called the par-
21 ticular witness. But there are situations where testimony
22 is received solely for the purpose of permitting you to
23 determine whether other testimony is truthful or not and
24 wherever this testimony was received, I have indicated
25 to you that I am accepting it solely on the issue of

1 eobr 10

2 credibility and not as bearing directly on the guilt or
3 innocence of this defendant.

4 For your guidance in considering the evidence you
5 have heard, I must tell you that there are two classes of
6 evidence recognized and admitted in courts of justice upon
7 either of which the jury may find an accused guilty of a
8 crime.

9 One is called direct evidence and the other is
10 called circumstantial evidence. Direct evidence tends to
11 show the fact in issue without need for any other
12 amplification although of course there is always the
13 question of whether it is to be believed.

14 Circumstantial evidence is evidence that tends
15 to show facts from which the fact in issue may reasonably
16 be inferred. It is evidence which tends to prove the
17 fact in issue by proof of other facts which have a legitimate
18 tendency to lead the mind to infer or conclude that the
19 facts sought to be established are true.

20 There is a traditional example given in the court.
21 Sometimes it is difficult to tell merely by looking out
22 the window whether it is raining or not, but if you see
23 people passing by in the streets have their umbrellas up,
24 you will usually come to the conclusion that it must be
25 raining outside. You have direct evidence, the evidence

1 eobr 11

2 of your own eyes that tells you that the umbrellas are
3 up and the fact that the umbrellas are up constitutes
4 circumstantial evidence from which you are entitled to con-
5 clude that it is raining. In other words, circumstantial
6 evidence consists of facts proved from which the jury may
7 infer by a process of reasoning other facts in issue.

8 Circumstantial evidence if believe is of no
9 less value than direct evidence for in either case you
10 must be convinced beyond a reasonable doubt of the guilt
11 of the defendant before you may convict.

12 Now, a word about credibility. In determining
13 what evidence you will accept as truthful, you must make
14 your own evaluation of the testimony given by each of the
15 witnesses and determine what you believe to be the truth
16 and the degree of weight you choose to give to that
17 testimony. The testimony of a witness may fail to con-
18 form with the facts as they occurred because a witness
19 is intentionally telling a falsehood or because a witness
20 did not accurately see or hear what he testified about
21 or because his recollection of the event is faulty or because
22 he hasn't expressed himself clearly in giving testimony.

23 There is no magic formula by which you can
24 evaluate testimony. You bring to this courtroom, each of
25 you, all of the experience and background of your every day

1 eobx 12

2 lives. In your every day affairs you determine for yourselves
3 the reliability of statements made to you by others.
4 The same tests you use in your every day dealings are the
5 tests which you apply in your deliberations.

6 You may, of course, consider the interest or
7 lack of interest of any witness in the outcome of this
8 case. A witness who is interested in the outcome of a
9 case is not necessarily unworthy of belief. The
10 interest of a witness, however, is a factor or a possible
11 motive which you may consider in determining the weight and
12 credibility to be given his testimony.

13 In doing this you may also consider whether the
14 testimony of a witness is corroborated by the testimony of
15 other witnesses or by documentary evidence or by exhibits.

16 You may also consider the bias or prejudice
17 of a witness if there be any and the manner in which
18 the witness gives his testimony on the stand. The appear-
19 ance and conduct of the witness in giving his testimony.
20 The opportunity the witness had to observe the facts con-
21 cerning which he testified to and the probability or
22 improbability of the testimony in the light of all the
23 other events in the case.

24 You may also consider whether a witness had any
25 motive to lie. These are all items to be taken into your

1 eobr 13

2 consideration in determining the truthfulness and weight,
3 if any, which you will assign a witness' testimony.

4 If such considerations make it appear that there
5 is a discrepancy in the evidence, you will have to consider
6 whether this may be reconciled by fitting the two witnesses'
7 testimony together and if that is not possible, you will
8 then have to determine which of the two conflicting versions
9 you will accept.

10 Now, if you find that any witness has wilfully
11 testified falsely as to a material fact, you may, but you
12 need not, disregard the entire testimony of that witness
13 on the principal that one who testifies falsely about one
14 material fact may testify falsely about everything, but you
15 are not required to consider such a person as totally
16 unworthy of belief. You may accept so much was testimony
17 as you deem true and disregard what you believe is false.

18 You, as sole judges of the facts, determine
19 which of the witnesses you will believe, what portion
20 of their testimony you will accept and what weight you will
21 give to it.

22 In this regard I remind you that the attorneys have
23 stipulated and agreed in this case that one witness, the
24 individual known as Kenneth Hochman, had lied or had
25 perjured himself or had testified falsely in connection

1 eobr 14

2 with a portion of his testimony here in the trial and this
3 is a matter for your consideration. As I pointed out be-
4 fore, however, you are not required to reject all the
5 testimony of Kenneth Hochman as totally unworthy of
6 belief. You may accept so much of his testimony as you
7 deem true and disregard what you believe is false having in
8 mind that we all know that he lied at least in one particu-
9 lar.

10 Now, the law permits a defendant upon his
11 request to testify in his own behalf. The testimony of
12 the defendant Arnold Perer is before you and you must
13 determine how far it is credible. The deep personal
14 interest which every defendant has in the result of his own
15 case should be considered in determining the credibility of
16 his testimony. You are instructed that interest may
17 create a motive for false testimony and the greater the
18 interest, the stronger is the temptation and that the
19 interest of a defendant is of a character possessed by no
20 other witness and is, therefore, a matter which may
21 affect the credence which may be placed on that testi-
22 mony.

23 However, that is entirely a matter for you to
24 determine using your own common sense in considering all of
25 the evidence in the case.

1 eobr 15

2 Now, there has been testimony here with regard
3 to previous good character of the defendant. Good char-
4 acter or a good reputation for veracity and truthfulness is
5 to be weighed as a factor in the defendant's favor and you
6 should consider it, together with all the facts and other
7 circumstances before you and then give it the weight to
8 which you think it is entitled. A defendant's reputation
9 for good character, for veracity and truthfulness may, like
10 other factors in his favor, generate a reasonable doubt as to
11 his guilt.

12 On the other hand, if on all the evidence you
13 are satisfied beyond a reasonable doubt that the defendant
14 is guilty, a showing that he previously enjoyed a reputation
15 for good character, for honesty, veracity, truthfulness,
16 does not justify or excuse the offense and you should not
17 acquit the defendant merely because you believe that the
18 defendant is a person of good repute if you are otherwise
19 satisfied beyond a reasonable doubt as to his guilt.

20 Furthermore, the testimony of a character
21 witness is not to be regarded by you as expressing the
22 witness' personal opinion of the defendant's character,
23 nor is it to be taken by you as that witness' opinion
24 as to the guilt or innocence of the defendant. The guilt
25 or innocence of the defendant is for you and for you alone

1 eobr 16

2 to determine.

3 Now, the indictment, as I mentioned, is in two
4 counts. Count 1 charges Arnold Perer as unlawfully
5 engaging in the business in dealing with firearms without
6 a license and Count 2 charges Arnold Perer with unlawfully
7 transporting into or receiving in his state of residence,
8 New York State, firearms obtained by him in the State of
9 Virginia.

10 I will now read Count 1 of the indictment to you
11 and in a few moments I will read Count 2 later on because
12 I plan to discuss them one at a time.

13 Count 1 first.

14 Count 1. The grand jury charges: From on or
15 about the 23rd day of November 1973 to on or about the
16 9th day of December 1973 in the Southern District of
17 New York, Arnold Perer, the defendant, who was not then
18 a licensed importer, licensed manufacturer or licensed
19 dealer unlawfully, wilfully and knowingly did engage in
20 the business of dealing in firearms.

21 That is Count 1. Now, Count 1 refers to two
22 federal statutes. Section 922(a)(1) of Title 18 of
23 the United States Code provides in pertinent part as fol-
24 lows:

25 "It shall be unlawful for any person, except a

1 eobr 17

2 licensed importer, licensed manufacturer or licensed
3 dealer, to engage in the business of importing, manufactur-
4 ing or dealing in firearms or ammunition."

5 Now, it is not necessary for you to remember
6 the actual section numbers so long as you understand the
7 provisions of the statute and are aware of what conduct
8 the statute declares to be unlawful.

9 The word "firearm" as used in this indictment
10 means any weapon which will or is designed to expel a project-
11 ile, that is a bullet, by the action of an explosive.

12 The term "dealer" as used in this indictment
13 means any person engaged in the business of selling fire-
14 arms or ammunition at a wholesale or retail and the term
15 "licensed dealer" means any dealer who is licensed under the
16 provisions of the Gun Control Act, which is Volume 19
17 of the United States Code, Section 921(a)*11).

18 Now, the parties to this case have stipulated
19 that the various firearms which have been received in
20 evidence in this case are designed to and capable of
21 expelling a projectile by the action of an explosive
22 within the terms of the statute. That is to say, it is
23 possible to fire a bullet from or through each of these
24 guns. That is not a matter which is in dispute in this
25 case.

1 eobr 18

2 It has also been stipulated by the parties
3 that Mr. Perer did not have a license during the period
4 of time covered by the indictment.

5 Now, I have already read to you the pertinent
6 provisions of Title 18 United States Code Section 922(a)(1),
7 which makes it unlawful to engage knowingly and wilfully
8 in the business of dealing in firearms and ammunition without
9 a license.

10 Count 1 also charges a violation of Title 18,
11 Section 2, and that statute provides that any person who
12 aids, abets, counsels, commands, induces or procures the
13 commission of an offense against the United States is
14 punishable equally as the person who commits the offense
15 directly himself. That is called aiding and abetting.

16 Now, in order to prove the defendant guilty of
17 the charge in Count 1 of the indictment, that is engaging
18 in the business of dealing in firearms without a license,
19 the government must prove to your satisfaction beyond a
20 reasonable doubt the following three elements:

21 First, that on or about November 23, 1973, Arnold
22 Perer knowingly and intentionally engaged in the business
23 of dealing in firearms.

24 Second, that this act occurred in the Southern
25 District of New York.

1 cobr 19

2 Third, that the defendant Arnold Perer had no
3 federal firearms license as an importer, manufacturer or
4 dealer at that time.

5 Those are the three elements of the crime
6 charged in Count 1.

7 Now, I have already defined the word "firearms"
8 for you. The word "dealer" means anyone who is engaged
9 in any business of selling firearms and a business is
10 that which occupies time, attention and labor for the purpose
11 of livelihood or profit. It is not sufficient to prove
12 guilt that the defendant may have on a single occasion sold
13 a single firearm.

14 You should be aware, however, that in reaching
15 a decision it is not a necessary element of the crime that
16 the defendant's only business be that of selling fire-
17 arms, nor need it be a significant source of income for
18 him.

19 In deciding whether or not the defendant dealt in
20 firearms, you must consider whether the defendant was
21 cognizant of what he was selling and use your common sense
22 to determine whether or not he did so on a basis suf-
23 ficiently regular to constitute a business.

24 Proof of only a single transaction involving a
25 sale of arms standing alone and without other evidence is

1 ecbr 20

2 insufficient proof of engaging in the business of dealing
3 in firearms.

4 However, if you find that there are other
5 circumstances to indicate that this activity was entered
6 into as a continuing one, that is sufficient for you to
7 find that this defendant engaged in the business of dealing
8 in firearms.

9 Indeed, more than one casual sale standing alone
10 without other evidence would not necessarily or auto-
11 matically constitute proof of dealing in firearms. It is
12 primarily a question of intent which is to be resolved
13 by the jury having regard to all of the surrounding facts
14 and circumstances and all of the credible evidence in the
15 case.

16 Of course it is possible for someone to set
17 himself up as a dealer in firearms and only make one sale
18 and in that case, if the jury so finds, that person would
19 be a dealer for purposes of this statute.

20 By the same token, the same person could have one
21 or two or even more than two casual sales of firearms
22 not partaking of the character of a business and such a per-
23 son might not be considered a dealer for purposes of this
24 statute.

25 It is entirely a question of fact which the jury

1 ecbr 21

2 is to resolve on the entire record in this case whether or
3 not this defendant was a dealer in the sense that he was
4 engaged in any business of selling firearms.

5 As I mentioned before, a business is an activity
6 which occupies time, attention and labor for the purpose
7 of livelihood or profit and as I noted before, it
8 is entirely possible for him to have been a dealer in firearms
9 and at the same time to have had a full-time job in the
10 floor finishing business if the jury so finds.

11 Now, as to each count the government must prove
12 beyond a reasonable doubt that the crime charged was committed
13 in the Southern District of New York. I instruct you that Adelphi
14 Avenue, the street which has been mentioned as the place
15 of residence of the defendant where some transaction is
16 alleged to have occurred, is in Bronx County, which is
17 part of the Southern District of New York, and furthermore,
18 with respect to Count 2, I instruct you that the easterly
19 half of the George Washington Bridge where the boundary
20 line between the State of New Jersey and the State of
21 New York is located and all of the streets easterly thereof
22 leading to the point of the alleged arrest with respect to
23 Count 2, which accuses the defendant of transporting firearms,
24 are likewise located within the Southern District of
25 New York.

ecbr 22

Now, in order for you to find the defendant guilty of Count 1, engaging as an unlicensed dealer, it is not necessary for you to find that he actually performed all of the acts alleged in the indictment. As I mentioned previously, the law provides that one who knowingly aids or abets another in any manner in the commission of a crime is equally guilty with the principal or the person whom he is aiding and abetting in the commission of that crime and is himself a principal and may be charged with the commission of the crime as a principal and convicted upon such a charge although the evidence proves merely that he knowingly aided and abetted someone else in the commission of the crime.

One who shares in another's criminal purposes and encourages or assists the other to carry out such purpose is an aider and abettor who is punishable under the law as a principal.

Now, there is no precise rule as to what acts a defendant must perform in order to constitute himself an aider or abettor. It is enough if the defendant in some manner associated himself, knowingly and wilfully, with the illegal venture, participated in it as something he wished to bring about, or that he sought by his actions to make it succeed. The assistance given need not contribute to

1 eobr 23

2 the criminal result so significantly that in the sense
3 but for such assistance the result would not have occurred.

4 The standard is not that high or rigid. It is
5 sufficient if the assistance given facilitates or encourages
6 a result that would have taken place without it.

7 Therefore, in order to find that the defendant
8 aided and abetted the engaging by someone else as an unlicensed
9 dealer, you must find beyond a reasonable doubt that he associ-
10 ated himself with the venture, that he participated in it
11 as something he wished to bring about and that he sought
12 by his action to make it succeed.

13 Now, when I talk in terms of aiding and abetting
14 the illegal venture of another person, I am referring in
15 the context of this case only to the person known as
16 Kenneth Hochman. If you find that the defendant did not
17 himself engage as an unlicensed dealer, but that Hochman
18 did so and that the defendant knowingly and wilfully
19 aided and abetted Hochman in doing so, within the context
20 that I have just explained to you, then on that basis you
21 may find the defendant guilty of Count 1.

22 However, the only person whom he could possibly
23 have aided or abetted is Hochman. It is not possible for
24 him to aid or abet Rojas in the context of this case
25 because Rojas was acting at all times as a government

1 eobr 24

2 informer.

3 Knowingly and wilfully going to Virginia
4 to purchase guns for Hochman in his own name to help
5 Hochman conduct the business of an unlicensed gun dealer,
6 if you find that is what this defendant Perer did, could
7 constitute aiding and abetting.

8 Now, before you may convict the defendant of either
9 count you must find with respect thereto beyond a reasonable
10 doubt that the defendant acted unlawfully, wilfully and
11 knowingly.

12 What do these terms unlawfully, wilfully and
13 knowingly mean? Well, an act is done knowingly if it is done
14 voluntarily and purposely and not because of a mistake or
15 an accident or mere negligence or some other innocent
16 reason.

17 An act is wilful if it is done knowingly,
18 deliberately and with an evil motive or purpose.

19 Unlawfully means contrary to law. Hence to do
20 an act unlawfully means to do something wilfully which
21 is contrary to law.

22 In determining whether the defendant acted
23 wilfully, it is not necessary for the government to
24 establish that the defendant knew that he was breaking any
25 particular statute. Rather, it is sufficient if you are

convinced beyond a reasonable doubt that he was aware of the general unlawful nature of his acts.

While the requisite knowledge and intent must be shown, I instruct you that direct testimony to prove this knowledge and intent is not necessary. A person's knowledge and the intent with which an act is done involve a person's state of mind which must be determined by reasonable inferences from the facts proved. It is obviously impossible to ascertain or prove directly what was the operation of the mind of the defendant on the date on which it is alleged the offenses charged in the indictment was committed. You cannot see inside his head and know what his thoughts are now and of course you cannot know what his thoughts were then, but you can judge the knowledge and intention of the defendant from a consideration of his conduct and statements and all of the facts and circumstances that you have heard about in this case.

Now I will discuss Count 2. In Count 2 the defendant Arnold Perer is charged with having violated Title 18 United States Code, Section 922(a)(3) which provides in pertinent part that:

"It shall be unlawful for any person other than a licensed importer, licensed manufacturer, licensed dealer or a licensed collector to transport into or receive

ecbr 26

in the state where he resides any firearm purchased or otherwise obtained by such person outside that state."

Count 2 reads as follows:

Count 2. The grand jury further charges:

On or about the 9th day of December 1973 in the Southern District of New York, Arnold Perer, the defendant, who was not then a licensed importer, licensed manufacturer, licensed dealer or licensed collector, unlawfully, wilfully and knowingly did transport into and received in the state where he resided, to wit, New York, 28 firearms, namely, one .33 caliber Colt Cobra revolver, two Titan .32 caliber revolvers, 12 Titan .25 caliber revolvers, six Galesi .25 caliber automatic pistols, one Phoenix .25 caliber automatic pistol, two RG .38 caliber revolvers, two charter arms revolvers, one H&R .38 caliber revolver and one FEI .38 caliber Derringer, which firearms were purchased and otherwise obtained by him outside said state.

In order to find the defendant Arnold Perer guilty of the offense charged in Count 2 of the indictment, you must find that each of the following elements have been proved beyond a reasonable doubt.

One, that Arnold Perer, the defendant, is not a licensed importer, licensed manufacturer, licensed dealer or licensed collector of firearms.

1 eobr 27

2 In this regard I instruct you that the defendant
3 stipulated that he was not so licensed at the time referred
4 to in this indictment.

5 Two, that the defendant obtain a firearm outside
6 the state of his residence.

7 Three, that on or about December 2, 1973 the
8 defendant transported into the state in which he resides, namely
9 New York, a firearm and, fourth, that the defendant acted
10 wilfully and knowingly in doing so.

11 Now, those are the four elements of Count 2
12 each of which must be proved to your satisfaction beyond
13 a reasonable doubt before defendant can be convicted of
14 Count 2.

15 Now, I believe I already explained all of the terms
16 involved in these elements and the definitions which I have
17 given you before of the various words apply also to
18 Count 2.

19 Now, in determining whether a defendant acted
20 with guilty knowledge or intent the fact, if you find it
21 true, that the defendant engaged in other transactions similar
22 to those charged in the indictment may be given consider-
23 ation by the jury.

24 Now I will discuss the question of entrapment.
25 The defendant asserts that he was a victim of entrapment

ecbr 28

as to both of the crimes charged in the indictment. Where a person has no intent or purpose to violate the law, but he is induced or persuaded by law enforcement officers or their agents or informants acting in their behalf to commit a crime, he is a victim of entrapment and the law forbids his conviction in such a case.

The fact that the government officials or their agents rarely afford opportunities to one who is ready and willing to violate the law when the opportunity presents itself does not constitute entrapment.

However, in their efforts to enforce the laws, government officials and their agents may not entrap an innocent person who except for the government's inducement would not have engaged in the criminal conduct charged.

Entrapment occurs only when the criminal conduct was the product of the creative activity of the law enforcement officials or their agents and informers. That if they initiate, incite, induce or lure an otherwise innocent person to commit a crime and engage in criminal conduct. If that occurs, the government may not avail itself of the fruits of this instigation.

Now, in this regard the defendant here asserts that he was induced to violate the law by the activities of Rojas, the government informer, and by Mazzilli, a federal

agent, acting either directly or through Rojas.

Now, if the prosecution has satisfied you beyond a reasonable doubt that this defendant was ready and willing to commit the offenses charged and merely was awaiting a favorable opportunity to commit them, then you may find that the government did no more than furnish a given opening or opportunity for the criminal activity in which the defendant was prepared to engage. In such circumstances you may find that the government's agents or informer or both of them have not seduced an innocent person, but have merely provided the means for the defendant to effectuate or realize his own then existing purposes.

On the other hand, if you have a reasonable doubt that the defendant would have committed the offenses charged without the government's inducement, then it is your duty to acquit him. Whether or not this defendant was entrapped is a question of fact and the jury must decide it on all the evidence in this case.

Now, there are ordinarily three ways in which the government can attempt to meet its burden and show that the defendant was ready and willing. One of these is that the defendant engaged in an existing course of criminal conduct similar to the particular incident for which the defendant is here charged.

1 eobr 30

2 There is some evidence in the case which, if
3 believed, may warrant the jury's conclusion that this defend-
4 ant had effected prior unlawful sales of firearms.

5 In addition, there is a lapse of about 16 days
6 between the activity referred to in Count 1 of the
7 indictment and the activity charged in Count 2 and the jury
8 may give this factual element such weight as it deems
9 proper in considering this question.

10 A second way the government can show that the defend-
11 ant was ready and willing is to prove to your satisfaction
12 beyond a reasonable doubt that the defendant, either
13 individually or acting jointly with Kenneth Hochman,
14 had an already formed design to commit the crime for which
15 he is charged in the particular count of the indictment which
16 you are then considering.

17 A third way is for the government to show
18 the defendant's willingness to commit the crime for which
19 he is charged. This can be evidenced by his ready response
20 to the inducement, if you find there was any induce-
21 ment.

22 A mere appeal to greed by offering a defendant
23 a higher price for the guns than would ordinarily be paid, if
24 you find that that is what happened in this case, would not
25 in itself constitute an entrapment. Whether repeated

2 requests to purchase guns under all the circumstances in
3 this case had the effect of luring or inducing an other-
4 wise innocent person to engage in unlawful conduct is a
5 matter which is before you for your decision, as I have
6 previously noted.

7 You may consider all the facts and circum-
8 stances insofar as they bear on whether or not the
9 defendant was ready and willing to commit the crimes
10 charged in the indictment or whichever count of the
11 indictment you are then considering before the informer
12 Rojas or the special agents talked with him.

13 The question of entrapment applies equally
14 to each count and is to be decided separately by the jury
15 with respect to each count. Based on all the circum-
16 stances existing at the time of the alleged activity in
17 that particular count of the indictment which you are
18 then considering, all as I have previously instructed
19 you.

20 Now, before the government is required to
21 prove beyond a reasonable doubt that the defendant was
22 ready and willing to commit the offense charged and
23 merely was awaiting a favorable opportunity to commit
24 them, the jury must first find that some credible evidence
25 in the case exists showing government initiation of the

1 eobr 32

2 illegal conduct. Of course, if you find that Kenneth
3 Hochman initiated the involvement of this defendant as to any
4 particular count of the indictment, rather than Rojas or the
5 special agents, then in that case there would be no
6 entrapment as to that count of the indictment because there
7 is no evidence that Kenneth Hochman was acting as a government
8 agent or informer.

9 I am almost finished. I would mention to you there
10 is no duty on the part of the government to call in
11 witnesses whose testimony would be merely cumulative and
12 specifically the government, notwithstanding any promise
13 made in the opening statement of the prosecutor, had no legal
14 duty to call either Rojas or Hochman as a witness.
15 Now, as I also explained to you, the defendant has no duty
16 to call any witnesses or bring in any evidence. However,
17 he may do so. And these particular witnesses, Rojas and
18 Hochman, were equally available to both sides and subject
19 to subpoena by the government or by the defendant and in fact
20 the defendant did call them, which was his right to do,
21 and accordingly no inference follows adverse to the government
22 from the failure to call these two persons or either of
23 them as witnesses.

24 In considering the evidence in the case, you
25 consider the entire evidence in the case. You do not

1 eobr 33

2 concern yourselves over who called what witness, but
3 rather what did the witness say and was it truthful and
4 what weight is his testimony entitled to. Those are the
5 questions which are for your consideration.

6 Now, under your oath as jurors you cannot
7 allow any consideration of the punishment which may be
8 inflicted upon the defendant, if convicted, to influence
9 your verdict in any way or in any sense to enter into
10 your deliberations.

11 The duty of imposing sentence rests exclusively
12 on the court. Your function is to weigh the evidence
13 in the case and determine the guilt or innocence of the
14 defendant solely upon the basis of the evidence and the
15 law. You are to decide the case upon the evidence and
16 the evidence alone and you must not be influenced by any
17 assumptions, conjecture or sympathy or any outrage or
18 any inference not warranted by the facts until proven to your
19 satisfaction.

20 If you fail to find beyond a reasonable doubt
21 that the law has been violated, you should not hesitate
22 for any reason to render a verdict of acquittal, but, on
23 the other hand, if you should find that the law has been
24 violated as charged, you should not hesitate because of
25 sympathy or any other reason to render a verdict of guilty a

1 eobr 34

2 a clear warning that a crime of this character may not be
3 committed with impunity. The public is entitled to be
4 assured of this.

5 A word about deliberating. Each juror is
6 entitled to his or her own opinion. Each should, however,
7 exchange views with his fellow jurors, discuss the case.
8 That is the purpose of jury deliberations. Discuss and
9 consider the evidence, to listen to arguments of fellow
10 jurors, present your individual views and to consult with
11 one another and to reach a fair and just verdict based
12 solely and wholly on the evidence if you can do so without
13 violence to your individual judgment, but each one of you must
14 decide the case for himself or herself after consideration
15 with your fellow jurors, but you should not hesitate to
16 change an opinion which you may hold which after discussion
17 with your fellow jurors appears erroneous in the light of the
18 discussion viewed against the evidence and the law.

19 However, if after carefully weighing all the
20 evidence and listening to the arguments of your fellow
21 jurors you entertain a conscientious view that differs from
22 the others, you are not to yield your judgment simply
23 because you are outnumbered or outweighed. Your final
24 vote must reflect your individual conscientious judgment as
25 to how the case should be decided.

1 eobr 35

2 In order to find a verdict with respect to
3 any count, it must be unanimous.

4 Now, in the course of your deliberations you may
5 want to have some part of the testimony read to you or you
6 might find that you are uncertain as to the meaning of
7 something that the Court might have said or you may want
8 to examine some exhibit. In any such case you may send
9 out a note to the Court through the foreman. The foreman
10 will write all the notes and ask in the note what you
11 desire.

12 Now, in sending out any notes, I ask the
13 foreman not to indicate in the note how the jury's vote
14 may then be divided. Do not do that.

15 When the jury has reached a verdict, inform the
16 marshals and you will be brought back into the court and
17 deliver your verdict in open court. Your foreman will
18 be Mr. Karp and he will send out any communications from
19 the jury through the marshals.

20 Let me finally state that your oath sums up your
21 duty and that is without fear or favor to anyone you
22 will well and truly try the issues between this defendant
23 and the government of the United States based solely upon
24 the evidence and the Court's instructions as to the
25 law. It is important to the defendant; it is important to

Now, at this time I am going to excuse the two alternates and thank you both, Mr. Migordi and Mrs. Nelson, and you are go go to Room 109. Please go directly to Room 109. It turned out we didn't need you to replace any juror and I do appreciate your careful attendance and your attention to this case.

(Marshals sworn.)

Now, in this regard I ask you not to discuss the case while seated in the box because there is a possibility that I might find it proper to give you additional instructions which you may not have presently received. So please remain seated in the box for a few minutes and do not discuss the case.

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2 discuss the case in the public restaurant when you go to
3 your luncheon, as you shortly will, and do not discuss
4 the case wherever one doesn't have an equal opportunity
5 to participate because the responsibilities and functions
6 of each juror are equal in reaching a verdict.

7 Please remain where you are while I consult
8 with counsel.

9 (In the robing room.)

10 THE COURT: Please be seated, gentlemen.

11 Mr. Garnett, do you have any requests or
12 exceptions?

13 MR. GARNETT: No, your Honor.

14 THE COURT: Mr. Richman.

15 MR. RICHMAN: I would respectfully request that
16 the jury may take into consideration the fact that the
17 government although they made certain promises in their
18 opening, they should be kept to their promises and that the
19 jury may draw certain inferences from their failure to
20 keep their promises.

21 THE COURT: In the context of this case I
22 wouldn't be inclined to give that. I will state very
23 briefly my reasons on it.

24 These two witnesses, whatever promises the govern
25 ment made, disgorged fully everything they knew or were

1 willing to testify to in this trial.

2
3 Secondly, there is some learning or thinking
4 to the effect that government has an affirmative duty not to
5 present a witness considered to be so depraved or so
6 lacking in truthfulness that it is just simply unconscion-
7 able to call him and I almost think that at least one
8 of these fellows falls in that category, although some of
9 his testimony may have been truthful.

10 I don't think in the context of this entire
11 trial it is significant that they failed to call them.

12 MR. RICHMAN: In most instances I might agree
13 with you except in this particular instance I think where
14 the jury takes for granted that the government is laying
15 out the road map or basis for their opening and the
16 government has a duty to comply with that. If they feel
17 that there is a witness who is so depraved that they
18 cannot offer his testimony, then they have a duty to make
19 that known to the jury as well and that is the reason
20 why he is not being offered as a government's witness.

21 Especially where one, here we have two witnesses
22 who the government has elected to change their mind in
23 mid-stream.

24 THE COURT: They are one and the same really.

25 MR. RICHMAN: Rojas and Hochman.

1 eobr 39

2 THE COURT: They are one and the same.

3 Rojas is extremely street-wise, to put it in simpler words,
4 a young punk and the jury saw that. Your client wasn't
5 prejudiced by the government's failure to call him, I don't
6 think, in the context of this case.

7 Do you want to say anything about this?

8 MR. GARNETT: Nothing, your Honor, except that
9 the government made a decision that it believed it had proved
10 its case with the testimony of the agents.

11 THE COURT: Did you inform Mr. Richman when
12 you reached that point?

13 MR. GARNETT: We informed him that we might not
14 call them.

15 THE COURT: When did you tell him that?

16 MR. LOWE: Your Honor, as I recall it,
17 at least the first time I recall specifically, is that prior
18 to finishing with our agents, we stated on the record that
19 Mr. Richman should be aware that both Mr. Hochman and
20 Mr. Rojas were available, that they were downstairs in the
21 lock-up and that the government did not intend to call
22 them.

23 THE COURT: All right, the record will show
24 that.

25 MR. LOWE: I am sure I made that statement or

had Mr. Garnett make it on the record prior to the time the government finished putting on its agents.

THE COURT: I think anything I would say which would cover this problem adequately would be just as likely to redound to the detriment of the defendant. You haven't give me a specific request, perhaps you should.

MR. RICHMAN: I have no other specific requests to make in framing the language.

THE COURT: Precisely what do you want me to tell them?

MR. RICHMAN: That the government made certain promises and they failed to keep these promises.

THE COURT: What relevance has that on the issue of innocence or guilt? This jury has every pertinent fact.

MR. RICHMAN: It has as much relevance, if not more relevance, as to who stipulated or who brought the attention of the Court the fact that the man lied.

THE COURT: Well, I have already instructed the jury to disregard who called the witness. They are to decide the case on all the facts.

MR. RICHMAN: Respectfully except, your Honor.

You made a reference that they should find, if they decide to find guilt, they should not hesitate

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2 to do so as a warning to the public. I feel, your
3 Honor --

4 THE COURT: It isn't quite in those words.

5 MR. RICHMAN: Warning was in your charge.

6 THE COURT: You may have an exception to that.

7 Clear warning that a crime of this character may not be
8 committed with impunity. That charge has been approved
9 numerous times in this circuit and has been presented
10 to the circuit for review many, many times and I think
11 it is appropriate. That is one of the reasons we are
12 trying this case.

13 MR. RICHMAN: If the Court pleases, I would also
14 object to your overall charge as feeling it was too much
15 favorable to the prosecution.

16 THE COURT: You have to point something specific
17 out. I cannot give you a general exception.

18 MR. RICHMAN: Your undue emphasis placed on the
19 question of reasonable doubt and --

20 THE COURT: That charge has been approved also.
21 Time-worn.

22 MR. RICHMAN: The failure of your Honor to spe-
23 cifically emphasize the individual dealing or self-
24 dealings does not make a man a dealer. Although your Honor
25 made reference to it, I don't think the emphasis was

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2 clear to the jury.

3 THE COURT: I went beyond the government's
4 requests in that particular context and I think I really
5 have made that clear.

6 MR. RICHMAN: Thank you, your Honor.

7 THE COURT: You may have an exception to
8 that.

9 Thank you.

10 (In open court.)

11 THE COURT: Members of the jury, you may not
12 withdraw to the jury room and commence your deliberations.

13 (At 12 o'clock noon the jury retired to
14 deliberate.)

15 (At 2:55 p.m. a note was received from the
16 jury.)

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17 (Marked Court's Exhibit 1.)

18 (In open court; jury not present.)

19 THE COURT: Gentlemen, we have a note from
20 the jury which has been marked Court's Exhibit 1. It says
21 as follows:

22 "Definition of entrapment as stated in Judge's
23 charge."

24 So I will now invite the jury to return to
25 the courtroom and I will read them my remarks with respect
to entrapment.

(Jury present.)

1 coal

2 (In open court; jury present.)

3 THE COURT: Good afternoon, members of
4 the jury. I have your note, which I have marked
5 Court's Exhibit 1, and which reads:

6 "Definitions of entrapment as stated in the
7 judge's charge."

8 I will now review with you the statements
9 I made with respect to the question of entrapment."

10 I think you will recall that I first said
11 that where a person has no intent or purpose to
12 violate the law but is induced or persuaded by law en-
13 forcement officers or their agents or informants
14 acting in their behalf to commit a crime, he is a victim
15 of entrapment and the law forbids the conviction in
16 such a case.

17 I told you then that the fact that government
18 officials or their agents merely afford opportunities
19 to one who is ready and willing to violate the law
20 when the opportunity presents itself does not consti-
21 tute entrapment.

22 However, in their efforts to enforce the
23 laws government officials and their agents may not entrap
24 an innocent person who, except for the government's
25 inducement, would not have engaged in the criminal

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2 conduct charged.

3 I told you further that entrapment occurs only
4 when the criminal conduct was the product of the
5 creative activity of the law enforcement officials or
6 their agents or informers. That is, if they initiate,
7 incite, induce, persuade or lure an otherwise innocent
8 person to commit a crime and to engage in criminal con-
9 duct. If that occurs the government may not avail
10 itself of the fruits of this instigation.

11 I pointed out to you the defendant asserts
12 that he was induced to violate the law by the activities
13 of Rojas, the government informer, and by Mazzilli,
14 a federal agent, or either of them.

15 I then informed the jury that if the prosecu-
16 tion has satisfied you beyond a reasonable doubt that
17 this defendant was ready and willing to commit the
18 offenses charged and merely was waiting a favorable
19 opportunity to commit them, then you may find that the
20 government did no more than furnish a convenient opening,
21 or opportunity for the criminal activity in which the
22 defendant was prepared to engage and that in such cir-
23 cumstances you may find that the government's agents
24 or informer, or both of them have not seduced an inno-
25 cent person but have merely provided the means for the

1 defendant to effectuate or realize his own then exist-
2 ing purposes.
3

4 On the other hand, if you have a reasonable
5 doubt that the defendant would have committed the
6 offenses charged without the government's inducement,
7 then it is your duty to acquit him.

8 Whether or not this defendant was entrapped,
9 I pointed out to you before, is a question of fact which
10 the jury must decide on all the evidence in the case.

11 I pointed out that there are ordinarily three
12 ways which the government can attempt to meet its burden
13 and show that the defendant was ready and willing.
14 One of these is to show that the defendant engaged in
15 an existing course of criminal conduct similar to the
16 particular incident for which the defendant is here
17 charged.

18 I called your attention to the fact that
19 there is some evidence in the case which, if believed,
20 may warrant the jury's conclusion that this defendant
21 had effected prior unlawful sales of firearms and, in
22 addition, I called your attention to the fact that there
23 is a lapse of about 16 days between the activity referred
24 to in count 1 of the indictment and the activity
25 charged in count 2 and the jury could consider this and

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give this factual element such weight as the jury deems proper in considering this question.

I pointed out to you that a second way the government can show that the defendant was ready and willing is to prove to your satisfaction beyond a reasonable doubt that the defendant either individually or acting jointly with Kenneth Hochman had an already-formed design to commit the crime for which he is charged in the particular count which you are then considering.

A third way is for the government to show the defendant's willingness to commit the crime for which he is charged by evidence of a ready response to the inducement, if you find there was any inducement. I informed you that a mere appeal to greed by offering a defendant a higher price for the guns than ordinarily would be paid, if you find that is what happened in this case, would not in itself constitute an entrapment. Whether repeated requests to purchase guns under all the circumstances in this case had the effect of luring or inducing an otherwise innocent person to engage in unlawful conduct is a matter which is before you for your decision as I previously noted.

1 coa5

2 You may consider all the facts and cir-
3 cumstances in so far as they bear on whether or not the
4 defendant was ready and willing to commit the crimes
5 charged in this indictment or in whichever count of the
6 indictment you are then considering before the informer
7 Rojas or the special agents talked with him.

8 The question of entrapment applies to each
9 count and it is to be decided separately by the jury
10 with respect to each count based upon all of
11 the surrounding circumstances existing at the time of
12 the alleged activity in that particular count of the
13 indictment which you are considering, all as I have pre-
14 viously instructed you.

15 I told you further that before the govern-
16 ment is required to prove beyond a reasonable doubt that
17 the defendant was ready and willing to commit the
18 offense charged and merely was awaiting a favorable
19 opportunity to commit them, the jury must first find
20 some credible evidence in the case of government
21 initiation of the illegal conduct and I said that if you
22 find Kenneth Hochman initiated the involvement of this
23 defendant as to any particular count of the indictment,
24 rather than Rojas or the special agents, then in that
25 case there would be no entrapment as to that count of

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2 the indictment because there is no evidence, nor is it
3 claimed, that Hochman was a government agent or informer.

4 That covers what I had said to you on the
5 subject of entrapment, members of the jury, and if you
6 desire any other or further information or have any
7 other questions about this or anything else pertaining
8 to your duties, of course you are free to send out
9 another note through the foreman, Mr. Karp, and I now
10 ask you to return to the jury room and continue your
11 deliberations.

12 (At 3:05 p.m. the jury retired to resume
13 its deliberations.)

14 THE COURT: We will be in recess, gentle-
15 men.

16 (Recess.)

17 (3:25 p.m.)

18 In open court; jury present.)

19 (Jury roll called.)

20 THE CLERK: Mr. Foreman, have you agreed
21 upon a verdict?

22 THE FOREMAN: Yes, we have.

23 THE CLERK: What is your verdict as to
24 count 1?

25 THE FOREMAN: Guilty on count 1.

2 THE CLERK: What is your verdict as to
3 count 2?

4 THE FOREMAN: Guilty on count 2.

5 THE CLERK: Listen to your verdict as it
6 stands recorded. You say you find the defendant
7 guilty on counts 1 and 2.

8 (The jury was polled; all answered in the
9 affirmative.)

10 THE COURT: I will direct the clerk to
11 record the verdict and at this time I am going to
12 excuse the jury with the thanks of the court for having
13 rendered your civic duty here as jurors. I would say
14 to you also that at this time you are relieved and
15 excused from your requirement not to discuss the case.
16 You now all have your free rights of free speech and you
17 can do or say anything you want to say. Your re-
18 quirement not to discuss it is now passed.

19 By the same token, I wanted to tell each
20 of you that there is no one that can make you discuss
21 or ask you about your reasons for your verdict or
22 your deliberations in the jury room. Very often
23 people may find that if they don't discuss it they may
24 feel more comfortable not doing so but it is a matter
25 for each of you and you can make your own decisions

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2 to suit yourself, but nobody can make you give any
3 account because you function as American citizens in
4 deciding the case according to the facts and the law.

5 I would also say to you before you leave
6 that it may be of interest to you as citizens and tax-
7 payers that this is Mr. Garnett's first trial. He
8 has just begun his career as a prosecutor in this build-
9 ing, so if any of you think he was a little hesitant
10 or a little slow or made any mistakes or anything like
11 that, you have to recognize everybody has to start some-
12 where. This happens to be his first case.

13 So you are now all excused with the thanks
14 of the court and you may withdraw from the courtroom.

15 Go directly to Room 109 and see the jury
16 commissioner and tell him you have finished your case.

17 (Jury excused.)

18 THE COURT: All right, I am going to direct
19 that a presentence report be made and I will set a date
20 for sentence.

21 MR. RICHMAN: Very well, your Honor. Will
22 that date be set today?

23 THE COURT: Yes, I will set it right now.

24 What is the status of Mr. Perer's bail?
25 Are you on your own recognizance?

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2 THE DEFENDANT: No, your Honor. My
3 mother posted her bankbook as \$5000 bail.

4 THE COURT: \$5000 secured bail?

5 MR. GARNETT: Our records indicate it is
6 a \$5000 personal recognizance bond co-signed by his
7 mother.

8 THE COURT: All my records show is a PRB.
9 It doesn't show any co-signing.

10 MR. RICHMAN: She had to show that she
11 had \$5000 in the bankbook when she came to sign the bond.

12 THE COURT: What was the criminal record
13 in this case?

14 MR. GARNETT: Your Honor, the defendant
15 had a three-page rap sheet with approximately 15 previous
16 arrests and --

17 THE COURT: I don't care about arrests,
18 Mr. Garnett.

19 MR. RICHMAN: They were only misdemeanors,
20 no felonies at all.

21 THE COURT: No felonies?

22 MR. RICHMAN: No felony convictions at
23 all.

24 MR. GARNETT: There was a felony charge
25 12 years ago in Columbus, Georgia, I believe.

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2 THE DEFENDANT: Misdemeanor, your Honor.

3 MR. GARNETT: He was convicted of a mis-
4 demeanor involving possession of a gun without a
5 license and sentenced to six months or a \$50 fine.
6 That is the only conviction involving guns.

7 MR. RICHMAN: If the court pleases, the
8 defendant will appear at each and every stage of the
9 proceedings. I would represent, your Honor, that he
10 has been most cooperative as a client, which is a rarity,
11 and has always appeared in my office.

12 THE COURT: It presents a difficult problem
13 for the court because this type of activity can lead
14 to violence.

15 MR. RICHMAN: Without question, your Honor.

16 THE COURT: No prior felonies?

17 MR. RICHMAN: No prior felonies, your
18 Honor.

19 THE COURT: All right, I will modify the
20 bail to provide that it shall be \$5000 cash or surety
21 and the bankbook can be posted.

22 MR. RICHMAN: Will your Honor give us
23 time to post it?

24 THE COURT: Yes, I will give you 24 hours
25 to do that.

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2 MR. RICHMAN: Very well.

3 THE COURT: I will give you a date for
4 sentence. December 17th, at 9:30 a.m.

5 MR. RICHMAN: Thank you, sir.

6 THE COURT: You are instructed, Mr. Perer,
7 of your obligations under your bail. You must be
8 present. You are not to leave this district, the
9 Southern District of New York, and if you violate any
10 of the terms of your bail, that will be a separate crime
11 wholly without regard to this case. Do you under-
12 stand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: All right. That is all.

15 MR. RICHMAN: I respectfully reserve any
16 motions until the 17th?

17 THE COURT: Don't reserve them to the 17th.
18 The statute gives you 10 days. I really feel this
19 case is a factual issue and I think the factual issue
20 was tendered to the jury and they decided it. If
21 you have something of substance, I think you ought to
22 make it on papers far enough in advance of the sentence
23 date so that it can be disposed of. You have 10 days
24 under the rule. If you need more time I will sign
25 an order enlarging your time, if you really need it and

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2 mean to bring a motion on papers.

3 All right.

4 MR. RICHMAN: Thank you, sir.

5 THE COURT: But you have to do it within
6 the 10 days. It is jurisdictional here, you understand
7 that. I don't see much basis, but maybe you have
8 something I don't know about.

9 All right, you are continued on bail for
10 24 hours for the purpose of posting the increased
11 bail.

12 The court will be in recess. That is all.

13 (Adjourned for sentencing to December 17,
14 1974, at 9:30 a.m.)
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U.S. ATTORNEY
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